

[Billing Code 3190-W9-P]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2009-0022]

Implementation of the U.S.-EC *Beef Hormones* Memorandum of Understanding

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and action.

SUMMARY: On May 13, 2009, the United States and the European Communities ("EC") announced the signing of a Memorandum of Understanding (MOU) in the *Beef Hormones* dispute. Under the first phase of the agreement, the EC is obligated to open a new beef tariff-rate quota (TRQ) in the amount of 20,000 metric tons at zero rate of duty. The United States in turn is obligated not to increase additional duties above those in effect as of March 23, 2009. The EC established the new beef TRQ on August 1, 2009. The Office of the United States Trade Representative (USTR) is providing notice that the Trade Representative is terminating additional duties that were announced in January 2009, but which have been delayed up to now and have never entered into force. This action leaves in place the additional duties that have been in effect since March 23, 2009 on a reduced list of products. (For ease of reference, the

reduced list is reprinted in the annex to this notice.) By taking this action, the Trade Representative has completed the process necessary to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU.

EFFECTIVE DATE: Additional duties in connection with the *Beef Hormones* dispute had been scheduled to be effective with respect to products that are entered, or withdrawn from warehouse, for consumption on or after September 19, 2009. Effective September 19, 2009, those additional duties are terminated. This action leaves in place the 100 percent *ad valorem* duties that have been in effect since March 23, 2009 on a reduced list of products.

FOR FURTHER INFORMATION CONTACT: Roger Wentzel, Director, Agricultural Affairs, (202) 395-6127 or David Weiner, Director for the European Union, (202) 395-4620 for questions concerning the *EC-Beef Hormones* dispute or the MOU; or William Busis, Associate General Counsel and Chair of the Section 301 Committee, (202) 395-3150, for questions concerning procedures under Section 301. Questions concerning customs matters may be directed to Renee Chovanec, International Coordination, Office of International Trade, U.S. Customs and Border Protection, 202-863-6384.

SUPPLEMENTARY INFORMATION

A. Background

In a notice published on January 23, 2009, the Trade Representative determined to modify the action taken in July 1999 in connection with the World Trade Organization ("WTO") authorization of the United States in the *EC-Beef Hormones* dispute to suspend concessions and related obligations with respect to the European Communities ("EC"). See 74 FR 4265 (Jan. 23, 2009) (hereinafter referred to as the January 2009 action). The January 2009 action initially had an effective date of March 23, 2009. The Trade Representative subsequently delayed the effective date of the additional duties imposed under the January 2009 action to April 23, 2009; to May 9, 2009; to August 15, 2009, and then to September 19, 2009. See 74 FR 11613 (March 18, 2009); 74 FR 12402 (March 24, 2009); 74 FR 19263 (April 28, 2009); 74 FR 22626 (May 13, 2009); 74 FR 40864 (August 13, 2009).

The effective date of the removal of duties under the January 2009 action remained March 23, 2009. As a result, a reduced list of products subject to additional duties (at a rate of 100 percent *ad valorem*) has been in place since March 23, 2009. These are products that had been covered by the 1999 action, but that had not been removed from the list under the January 2009 action. This reduced list is set out in the Annex to this notice.

Under the first phase of the MOU, which concludes on August 3, 2012, the United States maintains the right to impose the additional duties on this reduced list of products, and is obligated not to raise the level of duties on these products or to impose additional duties on any other products in connection with the *EC-Beef Hormones* WTO dispute.

Under a possible second phase of the MOU, the EC would expand the beef TRQ to 45,000 metric tons, and the United States would suspend all of the additional duties imposed in connection with the *EC-Beef Hormones* WTO dispute.

For additional background concerning the *EC-Beef Hormones* WTO dispute; the January 2009 action; and the prior delays in the effective date of the new duties under the January 2009 action, see 73 FR 66066 (Nov. 6, 2008); 74 FR 4265 (Jan. 23, 2009), 74 FR 11613 (March 18, 2009), 74 FR 12402 (March 24, 2009), 74 FR 19263 (April 28, 2009), 74 FR 22626 (May 13, 2009), and 74 FR 40864 (August 13, 2009). Further information on the May 13, 2009 U.S.-EC MOU may be found on USTR's website, www.ustr.gov.

In a notice published on August 13, 2009, the Section 301 Committee invited public comment on the action to be taken to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU. The notice included the list of products that have been subject to additional duties since March 23, 2009, and sought comments with regard to maintaining the 100 percent duties on those products throughout the remainder of the first phase of the MOU. See 74 FR 40864 (August 13, 2009). The comments submitted in response to the August notice may be viewed on the www.regulations.gov website under docket number USTR-2009-0022.

Taking account of the comments submitted in response to the notice, the Section 301 Committee recommended that the Trade Representative should terminate the additional duties under

the January 2009 action that have been delayed up until September 19, 2009, and should leave in place the reduced list of products subject to 100 percent *ad valorem* duties that has been in effect since March 23, 2009. The Trade Policy Staff Committee (TPSC) has adopted the recommendation of the Section 301 Committee.

B. Determinations to Implement U.S.-EC Beef Hormones MOU

1. Determination under Section 307(a)

Section 307(a) of the Trade Act of 1974, as amended, (“Trade Act”) provides that “The Trade Representative may modify or terminate any action . . . that is being taken under section [301] if . . . (B) the burden or restriction on United States commerce of the denial of rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased.” By establishing a 20,000 metric ton high-quality beef TRQ, the EC has decreased the burden or restriction on U.S. commerce.

The January 2009 action: (1) removed some products from the list of products that had been subject to 100 percent *ad valorem* duties since 1999; (2) imposed 100 percent *ad valorem* duties on certain new products from certain EC member States; (3) modified the coverage with respect to particular EC member States; and (4) raised the level of duties on one of the products (tariff subheading 9903.02.30) on the original 1999 list. The March 23, 2009 effective date of the imposition of new duties (items 2-4 above) was repeatedly delayed, and those duties have never

entered into force.

In light of the decreased burden or restriction on U.S. commerce resulting from the EC's establishment of the high-quality beef TRQ, and in accordance with the recommendation of the TPSC, the Trade Representative has determined under section 307(a) of the Trade Act to modify the January 2009 action by terminating the new duties (items 2-4 above) under the January 2009 action. The Trade Representative has determined to leave in place the 100 percent *ad valorem* duties on the attached list of products that have been subject to such duties since March 23, 2009. This action under section 307(a) implements U.S. obligations under the first phase of the MOU, while maintaining additional duties that have applied since March 23, 2009 in order to pursue additional market access under subsequent phases of the MOU.

2. Determination under Section 306(b)(2)(B)

Section 306(b)(2)(B) of the Trade Act provides for the periodic review and revision of section 301 actions taken in connection with WTO dispute settlement proceedings. Section 306(b)(2)(B)(ii)(II) provides an exception in the event that the Trade Representative and the affected U.S. industry agree that changing the action under section 301 is unnecessary.

Industry associations representing the U.S. beef-producing industry have informed the Trade Representative that they believe it is unnecessary for USTR to revise the retaliation list in the *Beef Hormones* dispute while the MOU, which provides additional market access for U.S. beef

producers, is in effect. Pursuant to section 306(b)(2)(B)(ii)(II) of the Trade Act of 1974, the Trade Representative has determined to agree with the affected U.S. industry that it is unnecessary to revise the retaliation list established pursuant to the above action under Section 307(a) while the EC is providing the additional market access in accordance with the MOU.

3. Section 306 Monitoring

Pursuant to Section 306 of the Trade Act, the Trade Representative will continue to monitor the EC's implementation of the MOU.

C. The Trade Representative's Action and the HTS

In July 1999, pursuant to a WTO authorization, the Trade Representative imposed 100 percent *ad valorem* rates of duty on a list of EC products. The 1999 action was reflected in subheadings 9903.02.21 through 9903.02.47 of the Harmonized Tariff Schedule of the United States (HTS), effective July 29, 1999. See 64 FR 40638 (July 27, 1999).

As noted, the January 2009 action: (1) removed some products from the list of products that had been subject to 100 percent *ad valorem* duties under the 1999 action; (2) imposed 100 percent *ad valorem* duties on certain new products from certain EC member States; (3) modified the coverage with respect to particular EC member States; and (4) raised the level of duties on one of the products (tariff subheading 9903.02.30) covered by the 1999 action. See 74 FR 4265 (Jan. 23,

2009). The January 2009 action left in place 100 percent *ad valorem* rates of duty on some of the products covered by the 1999 action.

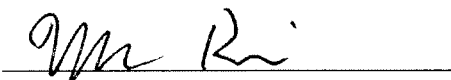
When the original March 23, 2009 effective date of the new duties under the January 2009 action was delayed, the annex reflecting the January 2009 action in the HTS was replaced by annexes to a notice published at 74 FR 12402 (March 24, 2009).

Annex I of the notice published at 74 FR 12402 (March 24, 2009) reflected the removal under the January 2009 action (item (1) above) of certain products from the list covered by the 1999 action, effective March 23, 2009. In particular, the following HTS subheadings were deleted from the HTS as of March 23, 2009: 9903.02.31, 9903.02.33, 9903.02.35, 03.02.37, 9903.02.38, 9903.02.39, 9903.02.40, 9903.02.41, 9903.02.42, and 9903.02.47. Also, because the scope of HTS subheading 9903.02.36 was reduced from fourteen EC member States to two EC member States, HTS subheading 9903.02.36 was deleted and replaced by HTS subheading 9903.02.83.

Annex II of the notice published at 74 FR 12402 (March 24, 2009) reflected the new duties (items 2-4 above) under the January 2009 action. The effective date of Annex II has been repeatedly delayed, and Annex II has never entered into force. In accordance with the Trade Representative's determination to terminate the new duties (items 2-4 above) under the January 2009 action, Annex II of the notice published at 74 FR 12402 (March 24, 2009) is hereby deleted.

As a result of the March 23, 2009 removal of certain products from the list covered by the

1999 action, a reduced list of products subject to additional duties has remained in effect since March 23, 2009. As noted, the Trade Representative has determined to leave in effect this reduced list of products subject to additional duties. Because this list has been in effect since March 23, 2009, no changes to the HTS are required to reflect the Trade Representative's determination under section 307(a) of the Trade Act. However, for ease of reference, the HTS subheadings for the list of products that continue to be subject to 100 percent *ad valorem* duties in connection with the *EC-Beef Hormones* dispute are reproduced in the Annex to this notice. Merchandise covered by the Annex that is admitted to a U.S. foreign trade zone must continue to be admitted in "privileged foreign status," as defined in 19 C.F.R. 146.41.

A handwritten signature in dark ink, appearing to read 'W. Busis', is written over a horizontal line.

William Busis

Chair, Section 301 Committee

Annex

	Articles the product of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden:	
	Meat of bovine animals, fresh or chilled (provided for in heading 0201):	
9903.02.21	Articles of subheading 0201.10.05, 0201.10.10, 0201.20.02, 0201.20.04, 0201.20.06, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.02, 0201.30.04, 0201.30.06, 0201.30.10, 0201.30.30 or 0201.30.50	100%
9903.02.22	Articles of subheading 0201.10.50, 0201.20.80 or 0201.30.80	100%
	Meat of bovine animals, frozen (provided for in heading 0202):	
9903.02.23	Articles of subheading 0202.10.05, 0202.10.10, 0202.20.02, 0202.20.04, 0202.20.06, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.02, 0202.30.04, 0202.30.06, 0202.30.10, 0202.30.30 or 0202.30.50	100%
9903.02.24	Articles of subheading 0202.10.50, 0202.20.80 or 0202.30.80	100%
9903.02.25	Meat of swine, fresh or chilled (provided for in subheading 0203.11, 0203.12 or 0203.19)	100%
9903.02.26	Carcasses and half-carcasses of swine, frozen (provided for in subheading 0203.21)	100%
9903.02.27	Hams, shoulders and cuts thereof, with bone in, of swine, frozen (provided for in subheading 0203.22)	100%
9903.02.28	Edible offal of bovine animals, fresh or chilled (provided for in subheading 0206.10)	100%
9903.02.29	Edible offal of bovine animals, frozen (provided for in subheading 0206.21, 0206.22 or 0206.29)	100%
9903.02.30	Roquefort cheese (provided for in subheading 0406.40.20 or 0406.40.40) . .	100%
9903.02.32	Truffles, fresh or chilled (provided for in subheading 0709.59.10)	100%
9903.02.34	Other prepared or preserved meat, meat offal or blood, of liver of any animal (provided for in subheading 1602.20)	100%

	Articles the product of France:	
9903.02.43	Hams, shoulders and cuts of meat of swine, with bone in, salted, in brine, dried or smoked (provided for in subheading 0210.11)	100%
9903.02.44	Wool grease (other than crude wool grease) and fatty substances derived from wool grease (including lanolin) (provided for in subheading 1505.00.90)	100%
9903.02.45	Chocolate and other food preparations containing cocoa, in blocks, slabs or bars, filled, weighing 2 kg or less each (provided for in subheading 1806.31)	100%
9903.02.46	Lingonberry and raspberry jams (provided for in subheading 2007.99.05) ..	100%
	Articles the product of Austria or France:	
9903.02.83	Juice of any other single fruit, not elsewhere specified or included, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%